Trion Corporation and Communications Workers of America, Local 9423, AFL-CIO. Case 32-CA-13420

#### March 31, 1994

### **DECISION AND ORDER**

### By Members Stephens, Devaney, and Browning

Upon a charge filed by the Union on September 1, 1993, the General Counsel of the National Labor Relations Board issued a complaint on October 26, 1993, against Trion Corporation, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On February 14, 1994, the Acting General Counsel filed a Motion for Summary Judgment with the Board. On February 17, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

### Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that on January 26, 1994, the Respondent's agent for service advised a representative of the Regional Office that the Respondent did not intend to file any answer to the complaint.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

### FINDINGS OF FACT

### I. JURISDICTION

The Respondent, a California corporation, with an office and place of business in Fremont, California, has been engaged in the installation and maintenance of cable, computer, and telephone wiring. During the 12-month period ending October 26, 1993, the Respondent, in the course and conduct of its business oper-

ations, sold goods or provided services valued in excess of \$50,000 to customers or business enterprises within the State of California, which customers or business enterprises themselves meet one of the Board's jurisdictional standards, other than the indirect inflow or indirect outflow standards. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

#### II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees employed by the Employer; excluding office clerical employees, confidential employees, professional employees, managerial employees and guards and supervisors as defined in the Act.

Since about 1987, and at all material times herein, the Union has been the designated exclusive collectivebargaining representative of the employees in the unit, and since said date the Union has been recognized as such representative by the Respondent. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which (the Agreement), is effective by its terms for the period May 13, 1990 through May 9, 1993, as thereafter extended indefinitely pending negotiations for a successor agreement by the Respondent and the Union, by their supplemental agreements dated May 7, 1993, and August 30, 1993. At all times since 1987, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the employees in the unit, for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

The Agreement contains, inter alia, the following provisions:

### ARTICLE 5 UNION SECURITY AND CHECKOFF

5.3 The Company agrees that, upon receipt of a signed authorization to deduct form approved by the Company and Union and signed by an employee covered by this agreement, it will deduct monthly from an employee's wages the amount of union dues specified in said form and forward the full amount thus deducted to the Union at the end of the calendar month. The form may be revoked by the employee at any time upon his written request to the Company. The Union may also revoke the dues authorization of any employee upon

the written request by the Union to the Company's appropriate representative.

5.4 In general, dues deductions will be made in the first scheduled pay period in the current calendar month following receipt of a signed and properly executed dues deduction authorization received by the Company. The Company will make every effort to correct any errors or omission in dues deductions and dues deduction authorizations

### ARTICLE 21 HEALTH AND WELFARE

- 21.1 The Company shall provide a medical plan, dental plan, and life insurance plan for all employees with six (6) months or more service. The Employer will pay 100% premium of medical plan.
- 21.2 Employees will be eligible for above paid coverage when they have completed six (6) months of service. If employee desires coverage prior to six (6) months service, he/she will have to pay full cost of coverage for the first six (6) months only.

# ARTICLE 22 RETIREMENT BENEFITS CWA/ITU NEGOTIATED PENSION PLAN

- (A) Effective July 1, 1990, the Employer agrees to contribute to the CWA/ITU negotiated pension plan (hereinafter sometimes referred to as the plan) \$.10 per hour of wages earned for each employee covered by this agreement, for the purpose of providing pensions on retirement, death benefits, and other related benefits for covered employees of the Employer and other contributing employers. Contributions shall be made for any shift for which an employee received compensation (e.g.: sick leave, vacation, holidays, disability insurance, bereavement leave, jury duty).
- (B) Contributions shall be made by check, money order, or similarly recognized medium of exchange and shall be made payable and forwarded to the CWA/ITU negotiated pension plan, P.O. Box 2380, Colorado Springs, Colorado 80901, no later than the 20th of the following month, together with reports on forms to be furnished by the plan.
- 1. These contributions will start from date of hire.

  2. Contributions will be based on regular straight-
- 2. Contributions will be based on regular straighttime pay.

The Respondent failed to continue in effect all the terms and conditions of the Agreement by:

(a) Since in or about May 1993, a more precise date being presently unknown, ceasing to remit to

- the Union the dues it deducted from employees' wages pursuant to the dues authorization check-off provision of article 5.3 and 5.4 of the Agreement
- (b) Since in or about June 1993, a more precise date being presently unknown, ceasing to provide employees with a medical and dental plan under the provisions of article 21 of the Agreement.
- (c) Since in or about March 1993, a more precise date being presently unknown, ceasing to make pension contributions on behalf of employees to the pension trust fund under the provisions of article 22 of the Agreement.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to the conduct and the effects of the conduct.

On or about May 13, May 21, June 15, and September 16, 1993, the Union requested that the Respondent furnish it with certain information, specifically, the names and addresses of current employees and data on any employee layoffs. This information is necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative of the unit. The Respondent delayed in supplying the information until September 22, 1993.

### CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has failed and refused, and is failing and refusing to bargain collectively and in good faith with the representative of its employees, and the Respondent has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by failing to remit to the union dues that were deducted from the pay of unit employees pursuant to valid dues-checkoff authorizations, we shall order the Respondent to remit such withheld dues to the Union as required by the Agreement, with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Furthermore, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to provide

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employees with a medical and dental plan as specified in the Agreement we shall order the Respondent to provide the contractually required employees' health insurance coverage and make the employees whole by reimbursing them for any expenses ensuing from the Respondent's unlawful conduct, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, supra.

Additionally, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to make contractually required contributions to the pension trust fund since March 1993, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any additional amounts due the fund in accordance Merryweather Optical Co., 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in Ogle Protection Service, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987).

Finally, having found that the Respondent has failed to provide the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees, we shall order the Respondent to furnish the Union requested information that is relevant and necessary.

### **ORDER**

The National Labor Relations Board orders that the Respondent, Trion Corporation, Fremont, California, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Failing and refusing to remit to the Union checked off dues moneys collected by the Respondent pursuant to the terms of the collective-bargaining agreement.
- (b) Failing and refusing to provide employees with a medical and dental plan as specified in the collective-bargaining agreement.
- (c) Failing and refusing to remit pension trust fund contributions to the appropriate Union trust fund as specified in the collective-bargaining agreement.
- (d) Failing and refusing to provide the Union with certain requested information necessary and relevant to

the Union's performance of its function as the exclusive collective-bargaining representative of its unit employees. The unit includes the following employees:

All full-time and regular part-time employees employed by the Employer; excluding office clerical employees, confidential employees, professional employees, managerial employees and guards and supervisors as defined in the Act.

- (e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Remit to the Union all checked off dues moneys collected since May 1993, as specified in the remedy section of this decision.
- (b) Provide employees with a medical and dental plan and make the unit employees whole, as specified in the remedy section of this decision.
- (c) Remit the contractually required trust fund contributions and other amounts due the Fund, and make the unit employees whole for its failure to remit pension trust fund contributions since March 1993, with interest
- (d) Provide the Union requested information which is necessary for and relevant to its performance of its function as the exclusive collective-bargaining representative of the unit.
- (e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.
- (f) Post at its facility in Fremont, California, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

<sup>&</sup>lt;sup>1</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. March 31, 1994

| James M. Stephens,    | Member |
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| Dennis M. Devaney,    | Member |
| Margaret A. Browning, | Member |

## (SEAL) NATIONAL LABOR RELATIONS BOARD APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to remit to Communications Workers of America, Local 9423, AFL-CIO, checked off dues moneys we collected pursuant to the terms of the collective-bargaining agreement with the Union

WE WILL NOT fail or refuse to provide employees with a medical and dental plan as specified in the collective-bargaining agreement.

WE WILL NOT fail or refuse to remit pension trust fund contributions to the appropriate Union trust fund as specified in the collective-bargaining agreement.

WE WILL NOT fail or refuse to provide the Union with certain requested information necessary and relevant to the Union's performance of its function as the exclusive collective-bargaining representative of our unit employees. The unit includes the following employees:

All full-time and regular part-time employees employed by the us; excluding office clerical employees, confidential employees, professional employees, managerial employees and guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL remit to the Union all checked off dues moneys collected since May 1993.

WE WILL provide unit employees with a medical and dental plan and make them whole, as specified in the remedy section of a decision.

WE WILL remit the contractually required trust fund contributions and other amounts due the fund, and make our unit employees whole for our failure to remit these contributions since March 1993, with interest.

WE WILL provide the Union requested information which is necessary for and relevant to its performance of its function as the exclusive collective-bargaining representative of the unit.

TRION CORPORATION